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HUMAN RIGHTS COMMITTEE

Sixty-fourth session

SUMMARY RECORD OF THE 1715th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 October 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. BHAGWATI
(Vice-Chairperson)

later: Ms. CHANET

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GE.98-19235 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Japan (continued) (CCPR/C/115/Add.3; CCPR/C/115/Add.3/Corr.1; CCPR/C/64/Q/JAP/1)

1. At the invitation of the Chairperson, the members of the Japanese delegation took places at the Committee table.

2. Mr. SCHEININ thanked the Japanese delegation for providing pertinent answers and said he also welcomed the lively presence of a wide community of NGOs which had provided such a wealth of detail that the Committee would inevitably be unable to deal with all of the issues. The volume of critical material was not a sign that Japan was one of the worst human rights violators in the world, but that it was an open and democratic society where NGOs could criticize the Government. Nevertheless, there was a certain structural weakness in the implementation of the Covenant and of Japan's general human rights obligations. The present situation showed a lack of domestic dialogue on the Covenant and the Committee's concluding observations. The Committee's role with regard to democratic societies was to contribute to a primarily domestic dialogue, the aim of which should be to follow up and implement the findings of the Committee.

3. Unfortunately, the NGOs still identified many issues which had been discussed by the Committee in relation to the previous report and did appear in the 1993 concluding observations. One example was the legal position of illegitimate children. The delegation had stated that the distinction drawn in inheritance rights was not a violation of article 26 of the Covenant, yet the Committee had expressly said it was inconsistent with article 26. That should have been the starting point for a domestic dialogue on how to implement the Committee's findings. Another example was the death penalty. In 1993 the Committee had recommended measures towards abolition, but four persons had been executed three weeks later, and the statistics provided by the delegation demonstrated a clear rise in executions, with 25 in the most recent five-year period, as opposed to three in the previous five-year period. It was difficult to understand how such a situation constituted measures to implement the Committee's recommendations.

4. Again, the Committee had been quite explicit in stating that the undue restrictions on correspondence and visits, and the failure to notify the family of executions were incompatible with the Covenant. The report gave little information on the conditions on death row, but NGO material showed there had been no change. Persons sentenced to death sometimes waited 25 or 30 years. Many of them were elderly, over 70 years old, were subject to serious restrictions or kept in solitary confinement. They were virtually deprived of contact with the outside world and, indeed, had none if their relatives did not wish to visit them. Such treatment was incompatible with articles 7 and 10 of the Covenant and more information would be welcome on how Japan intended to take action in that regard.

5. Paragraph 43 of the report (CCPR/C/115/Add.3) stated strangely that ratification of the Optional Protocol was problematic in "maintaining the independence of the judiciary". Two explanations were possible for such a stance. Firstly, the views expressed by the Committee might in some way be prejudicial to the functioning of the judiciary, which was an indefensible position. The Committee was a body authorized at the international level to interpret the Covenant by means of general comments, concluding observations on State reports and findings on individual communications. It was to be hoped that Japan's reluctance in implementing the concluding observations was not a sign of a similar approach to findings on individual communications. All States parties should follow the Committee's case law on individual communications and take the necessary steps to amend domestic laws and incorporate the Committee's findings in judicial practice. Whether or not Japan was a party to the Optional Protocol, the case law was information on the proper interpretation of the provisions of the Covenant.

6. Another possible explanation was that in some cases the Committee might deal with a complaint even when domestic remedies had not been exhausted. He assured the delegation that the Committee would not deal with cases which were pending before the Japanese courts and had no intention of interfering with ongoing judicial proceedings. In every instance the Committee respected procedural fairness under the Optional Protocol, and the Government therefore always had an opportunity to explain possible delays in the judicial process. Accordingly, there was no real justification for delaying ratification of the Optional Protocol.

7. In a recent case involving Australia and a situation of prolonged, almost automatic, detention of illegal immigrants, the Committee had found that it constituted arbitrary detention, in violation of article 9, paragraph 1, of the Covenant, and in the absence of no effective judicial review allowing for the possibility of release, also a violation of article 9, paragraph 4. The system of detention of asylum seekers and unauthorized immigrants in Japan did seem to raise similar issues. He would like further information in that regard. In order not to be arbitrary, detention should always meet the criteria of necessity and reasonableness in every instance.

8. Mr. KRETZMER extended a warm welcome to the delegation of Japan and thanked the NGOs for their contribution.

9. It was a basic premise that people deprived of their liberty did not forfeit their other rights, something that was implicit in article 10 of the Covenant. Both the report and the NGO material seemed to indicate that in Japan prisoners were deprived of all their rights, except those granted by the prison authorities, even such basic rights as freedom of speech and association with others and family rights. It was particularly disturbing to find the same issues cropping up in connection with the fourth report, as with the third report (CCPR/C/70/Add.1 and Corr.1-2). It appeared that Japan had not paid attention to the Committee's recommendations.

10. Information from NGOs showed there were still totally unacceptable limitations on the rights of people on death row, and the reasons given were

unacceptable. For example, the explanation in paragraph 65 of the fourth report for not informing counsel or the family when a person was about to be executed was that they might become mentally distressed and be unable to remain calm. The fact was that people were more likely to become mentally distressed as a result of long-term total isolation and solitary confinement. If the prisoners' mental welfare was a prime consideration, surely the best means would be for them to be able to maintain contact with the outside world, especially with those close to them. Actually, the Committee had been told that counsel was not informed beforehand of the date of the execution. No reason had been given, but the records of the consideration of the third report showed that the Japanese delegation at that time had said that if the date was known on the outside then there was a risk that the execution might be hindered - a very puzzling assertion. Presumably, the hindrance would be an attempt to go to court for an injunction against the execution, or to exercise democratic rights in holding a demonstration against it. If so, the failure to inform was not only cruel but a violation of article 2, paragraph 3 (a), under which an effective remedy must be available. Moreover, as the Committee had said previously, such treatment was cruel and inhuman and a breach of articles 7 and 10.

11. A number of issues arose regarding the rules of conduct for detainees, the punishments imposed on people who broke the rules, the procedure for imposing such punishments, the lack of remedies for people wanting to protest against prison conditions, the fear of reprisals among those who did petition the Ministry of Justice, and prison conditions in general. NGO representatives had said that in many prisons the rules restricted eye contact between prisoners and certainly prohibited talking. Paragraph 95 of the report conceded that "conversation necessary to the work is, however, permitted, and talking is not prohibited during recesses". Throughout the world, talking was a natural part of the work environment, and what was more, did not appear to affect safety.

12. Another example was a rule for inmates of Fuji prison which said: "Do not associate with others without permission or in a manner other than that for which permission has been given". Article 22 of the Covenant set out the right of association, which should not be denied to prisoners. From another rule it seemed that conversation was prohibited at most times. The rules were problematical and were mostly inconsistent with the Covenant, particularly with article 10. Punishment for breaking the rules involved, inter alia, widescale use of solitary confinement and leather handcuffs, which were painful, restricted movement, and made it impossible to eat or go to the toilet normally. Prisoners were not entitled to see a lawyer. What supervision was there to guarantee that prison officers did not vindictively punish prisoners against whom they had a grudge? Petitions could be made to the Ministry of Justice, but reliable sources reported that prisoners who complained feared reprisals by prison guards. What mechanisms were there in the Japanese prison system to ensure that anyone who complained would not be subjected to reprisals? What was the exact mechanism for issuing complaints? Fushu prison regulations stated that petitions should not be made repeatedly and, even when made in accordance with specified procedures, should not be "demanding" in any way. Why were restrictions placed on the way people made their petitions?

13. The Committee had been told there was no heating in the prisons. What arrangements were made to make sure that prisoners did not suffer from the cold?

14. Paragraph 81 said that the prisoner's right to remain silent was a basic principle of Japanese law. If, however, pressure was brought to bear on a prisoner, that right was only theoretical and, therefore, meaningless. According to paragraphs 87 and 88, confirmed by the delegation, the prosecution had the right to decide whether a pre-trial detainee should be allowed access to counsel, and could prohibit access for the sake of the investigation. Evidently, if the prosecution thought counsel would advise silence, it would prevent access. How was the right to silence protected in such a situation?

15. The Committee's concluding observations on the third report had clearly stated that articles 9, 10 and 14 were not fully complied with. One important issue was access by defence counsel to all the evidence in a case. A person could spend up to 23 days in detention and, in that time, the prosecuting authorities presumably acquired a great deal of information. Yet paragraph 155 showed that the defendant or defence counsel had access solely to the information the prosecutor intended to submit. What were the guarantees that the defence could obtain information beneficial to its case? Paragraph 155 noted that a court might individually issue an order to disclose evidence held by the public prosecutor, but defence counsel first had to know that such a document existed and make a specific request for it. Clearly, in most cases defence counsel would not know about such information. If the State party wished to be consistent with its obligations under article 14, paragraph 3 (b), concerning adequate time and facilities for preparation of the defence, it should be a basic principle that all evidence gathered by the prosecuting authorities be made available to the defence once the investigation was completed. He would welcome clarification of that point.

16. Mr. BUERGENTHAL commended the way in which the Japanese Government had ensured that the delegation was made up of persons able to provide the Committee with information on all aspects of Japanese law and practice as they related to the guarantees of the Covenant.

17. He was impressed with the care with which the report had been prepared, but saddened by the intellectual rigidity and one-sidedness reflected in its content. With particular reference to the areas already touched on by Mr. Kretzmer, articles 9, 10 and 14, the report failed even to acknowledge that there might be some problems as far as human rights were concerned, despite the fact that the Committee had already pointed to many flaws in the Japanese criminal justice system. Moreover, the Japanese Federation of Bar Associations, presumably not an extremist group, had very strongly criticized some practices as being in violation of the Covenant, something which was supported by other material received from NGOs. The contents of the report would have benefited from an attempt to confront the criticisms and by the realization that, in a democratic State, issues regarding due process of law should not be the sole preserve of the Ministry of Justice but should be worked out in collaboration with all the groups concerned, both public and private. The report gave the impression of having been written and discussed only by the Ministry of Justice and the prosecutors, which unfortunately did

not lead to any reform. The fact that so many Japanese non-governmental organizations were present in the room and had submitted counter-reports was evidence of real freedom in Japan, which could not, regrettably, be said about all countries. Nevertheless, the conclusion from reading the report was that some Japanese practices violated various international legal obligations assumed by ratifying the Covenant. Moreover, those who had written the report seemed not even to realize it, which was the most disquieting aspect.

18. Like Mr. Kretzmer he was struck by the extremely high rate of confessions obtained while suspects were being held in police custody. The separation between police detention and the police interrogation officials, which was used as an argument to contend that the prison substitute system was compatible with the Covenant, was not convincing; nor was the economic argument advanced by the delegation. If the substitute prison system were the only problem regarding due process and detention in Japan it might still have passed scrutiny under the Covenant, but the entire system was at issue. Some aspects had already been dealt with by Mr. Scheinin and Mr. Kretzmer. The strict discipline, lack of access to a lawyer, and so on, together presented serious problems under the Covenant. He could not believe that the investigation and questioning of prisoners in police custody met all due process requirements, if only because the exclusion of defence counsel during the interrogation stage in the criminal justice system violated the rights of the defendant. It also explained why there were so many confessions and, why, as much evidence indicated, many were obtained under duress.

19. The delegation had explained that, while there was no independent prison supervisory system, there were inspectors. However, to whom did the inspectors report their findings when something had happened? It appeared they reported to the prison authorities, in which case it would hardly be surprising if action was very seldom taken, since the findings would reflect on the prison authorities. How did the process work? How many disciplinary cases had been brought, and before whom? Had there been judicial proceedings, and how many cases over the past few years had been successful - cases which had been investigated and in which police abuse had been found? Abuse happened in most countries and assertions that there was none were therefore highly questionable. Everyone was aware of what happened in prisons, particularly when there were no supervisory mechanisms.

20. Paragraph 92 of the report said the conflict between the defence counsel and the authorities over access to clients in detention had almost disappeared. That was not the opinion of the Japanese Federation of Bar Associations in its report on police detention. It pointed out that mail to and from clients was often censored, and not enough time - sometimes only 15 minutes - was allowed for consultation. Comments by the delegation on the report by the Japanese Federation of Bar Associations would be welcome.

21. The detention regime raised serious questions about the rights guaranteed in article 10. How was it possible to square enjoyment of the right to humane treatment with the extremely strict regime of detention - no speaking, no eye contact, restriction even during eating, only 15 minutes of daily exercise, and insufficient time to wash? Such questions and many others concerning the entire due process regime needed to be addressed in Japan by independent citizens' commissions that could propose reforms consistent with

Japan's obligations under international treaties and basic standards of humanity. Leaving such matters to the police, prosecutors and the Ministry of Justice would never produce results. In no country, if such matters had been left to the justice authorities, would there have been any progress or reforms over the past 40 years.

22. As for Mr. Lallah's point on educating State prosecutors and judges in matters pertaining to human rights obligations, he had received a letter a few days previously from a former Japanese student about a case decided on 27 March 1998 in the Kyoto District Court. Lee Chang Sok's lawyer had invoked the Covenant and the Committee's jurisprudence regarding article 6. The lawyer had simply been told by the judge that "since Japan has not ratified the Optional Protocol the views of the Committee do not legally bind Japan", a total misperception of the function of the Committee's jurisprudence and of Japan's obligations under the Covenant. A similar problem in the United States among judges ignorant of international obligations was being overcome with special training seminars, some privately funded, with surprisingly good results. If such remarks by Japanese judges were typical, a lot of education was needed. He would not wish to give the impression that Japan was a country where the rule of law and democratic principles did not prevail; but, like many countries, it had important blind spots. One serious blind spot related to due process and detention of prisoners.

23. Ms. MEDINA QUIROGA welcomed the Japanese delegation and thanked its members for the precision with which they had answered the Committee's questions and said she agreed with Mr. Scheinin's comments on NGOs. She endorsed Mr. Lallah's comments on discrimination against children and Koreans, concurred with Mr. Pocar on the interpretation of article 14 of the Constitution and associated herself with the remarks made by several members about articles 7, 9, 10 and 14. She, for her part, would confine her comments to the issue of gender equality.

24. The steps taken by Japan to improve the human rights situation were encouraging. The report revealed some slight progress in the participation of women in the public and the private sectors, but paragraph 50, tables 3 and 4 and figure 1 pointed to areas in which there had been no progress and, indeed, the situation had deteriorated. The delegation had said that, in the private sector, women's wages were 63.1 per cent of men's. She had been informed that major finance, insurance and other companies used a system of "course management", in which workers were divided into two groups, depending on ability and willingness. One group led to promotion, while the second did not. Apparently 99 per cent of men were in the first group, while over 90 per cent of women were in second. Was that true? Did the amendment to the Equal Employment Opportunity Law deal with that problem?

25. The situation of women was further aggravated by the burden of home and childcare that was placed upon them, forcing them into employment on an irregular basis, which was disadvantageous for workers in all countries. Laws did not suffice to deal with such problems, although she had been very interested to hear from the delegation that a law on promoting measures for human rights protection had been enacted. Did it cover education about gender issues, particularly for judges, public prosecutors and law enforcement officers?

26. As she understood it, there was no law on sexual harassment, but the new employment law requested employers to take measures to deal with the problem. She wondered whether that was enough, however, especially since employers were fairly imaginative in devising ways to bypass laws and the general provisions of criminal law could be applied restrictively by judges. Victims of rape were apparently required to show evidence that they had resisted attack. The legal precedents and standards were reportedly that the force used must be so extreme as to deprive the victim of the ability to resist and that a certain degree of violence was a normal part of sexual intercourse. That would seem to make prosecution for rape very difficult for the victims, especially since their privacy was not protected during trial.

27. The fact that the provisions of the Penal Code could be applied in cases of domestic violence did not seem sufficient to counter the problem, especially when it was the second most common cause for divorce and one third of female murder victims died at the hands of their male partners. Were any civil remedies such as restraining orders available? How did the members of the police force behave towards victims and did the State have any way of ensuring proper treatment? Was assistance provided to battered women? Had the precedents stressing the right of husbands to compel sexual intercourse and indicating that a certain degree of violence was normal in sexual relations been overturned? Perhaps a law targeting domestic violence and taking into account all its specific features was needed.

28. Again, trafficking in women was a very serious problem. She was encouraged by the information that measures were being taken against agents and middlemen but she was concerned about the women themselves. Japan seemed to offer the largest pool of Asian women in the sex industry. Women were taken to the country, deprived of their passports and forced to pay back the investment made in them, in a form of debt bondage that clearly violated articles 7 and 8 of the Covenant. Many were minors to whom special protection should be afforded under article 24 of the Covenant. Many had children by Japanese men, but since the nationality of the father had to be asserted before birth, the child often could not claim Japanese nationality. The State allowed women who had been victims of trafficking to remain in the country, and that was a very positive approach. However, it appeared that acquiring a visa in order to take advantage of that option could take up to three years, during which time the woman and her child, if she had one, were deprived of all forms of social assistance. Many of the women apparently had babies in hospitals and left without paying, which meant that their child was not given a birth certificate and therefore had no personal status at all, whether for the purpose of leaving the country, remaining there or receiving social aid. What protective measures were being considered by Japan for women who had formerly been the victims of trafficking? She had heard of stateless women born in Asian refugee camps who would normally, because of the length of their stay in Japan, be allowed to receive Japanese nationality but were denied it because they had worked as prostitutes. What measures would be taken to solve that problem?

29. The consent of the woman's spouse was reportedly required before she could undergo surgical sterilization. Yet approximately 16,000 women had been forcibly sterilized under a Government programme carried out from 1949 to 1995. The consent of the spouse to sterilization was apparently valued

higher than the consent of the woman herself. Had the women affected by the programme been offered compensation for what was a clear violation of their personal integrity and privacy? In short, the report of Japan and the information provided by NGOs pointed to a general attitude of discrimination against women. Gender equality still had a long way to go, and she hoped to hear from the Japanese Government that steps would be taken to achieve it.

30. Mr. Bhagwati took the Chair.

31. Mr. WIERUSZEWSKI congratulated the Japanese delegation on an excellent presentation of the report and the answers to the list of issues. He was greatly encouraged to see the large number of representatives of NGOs at the meeting and hoped that the contacts between NGOs and the Government would continue in Japan and would not remain wholly contingent on the Committee as an intermediary.

32. He endorsed the comments made by many members, particularly by Ms. Medina Quiroga. Many legislative measures appeared to have been undertaken to improve gender equality, but it was his impression that they were not accompanied by other actions essential to improving the status of women in society. The very composition of the large Japanese delegation itself did not bespeak gender equality. He hoped the Government would pay serious attention to promoting the representation of women in governmental bodies. Information from independent sources revealed that the wage gap between men and women was still a serious problem, contrary to what the delegation had said on that subject.

33. Paragraph 67 of the report referred to "national sentiments" against the abolition of the death penalty. Had the Government done anything to change those sentiments, such as replacing the death penalty by life imprisonment? In many countries, including his own, the public had opposed abolition of the death penalty. If all countries waited for public sentiment to turn, the death penalty would never be abolished. He agreed with the concerns expressed about the situation of prisoners on death row. Allowing them to have contact solely with their family, not with NGOs or humanitarian organizations, might deprive them of all actual contact with the outside world, since many families cut off their ties with persons condemned to death.

34. What was the Government's view on the so-called progressive system of treatment for prisoners? The report gave a good picture of the prison system's efficacy, especially in reducing the rate of recidivism. But the Committee considered that many aspects of the system violated human rights standards. It seemed very mechanical, linking treatment solely to the passage of time, not to individual needs.

35. Ms. EVATT said she agreed with virtually all the comments already made, particularly those by Ms. Medina Quiroga on gender equality. The report was welcome indeed, but despite the wealth of information provided, there was little evidence of substantive change in the matters of concern to the Committee. The issues now being raised with respect to Japan were almost identical to those aired during the consideration of the third periodic report, on which the Committee had already expressed its views. The reasons why so little change had occurred in five years called for in-depth study.

36. She endorsed the questions on compliance with article 14 in relation to detention and would like to know whether it was true that in Tokyo there were in fact enough places in detention centres for all of the persons held in police custody. In what proportion of cases did the judge choose to order a suspect to be held in a detention centre rather than a "substitute prison" - was it really less than 1 per cent? Was it true that the detainee's lawyer was not allowed in court when that was decided? To say, as the delegation had, that bail was not necessary during the 23-day period of detention ran counter to the Covenant.

37. Japanese laws on mental health seemed to leave some issues unresolved, particularly regarding patients held on an involuntary basis. Did the law require that the notice of detention give the reasons therefor? Was the full report of those details available to the patient or his or her advisers? She understood that the Mental Health Review Board consisted of persons appointed by the prefecture and acted on referral by the Government. Did that mean that the patient had no direct access to the Board? How did that meet the requirements of article 9, paragraph 4, for review of detention by a court? Was there provision for compensation, as required by article 9, paragraph 5, in the event of unlawful detention? The report stated that 34 patients had been released after the Review Board had examined requests, but did not explain how many requests for release had been made. Was it true that 862 requests had been made in 1996 and only about 30 had been granted?

38. The Labour Relations Commission was said to be a tripartite body and had an important role in eliminating infringements of the right to organize. Was it true, however, that Government nominations of trade union representatives were drawn almost exclusively from one group, the Japanese Trade Union Conference, and virtually none from the independent trade unions?

39. The CHAIRPERSON said there was clearly a great need for judges to receive training in human rights, something which had been very successfully undertaken in other countries.

The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.

40. Ms. Chanet resumed the Chair.

41. Mr. AKAO (Japan) thanked members for their words of appreciation for the contribution made to the Committee's work by Mr. Ando and their interest in the human rights situation in Japan.

42. Admittedly, the statistics on women in senior posts in the Government or serving in Parliament showed there was still much room for improvement, but from a historical perspective progress had been made. At present, 4.8 per cent of the members of the House of Representatives and 17.1 per cent of members of the House of Counsellors were women. Of the 750 members of the Diet, 67, or 8.9 per cent, were women. Government officials were recruited exclusively on the basis of results in the civil service examination. There was no discrimination against women, but more of them needed to take the examination and to pass. Promotion was on the basis of merit, and, there too, no discrimination was practised against women.

43. Mr. KAITANI (Japan) said that measures taken to achieve gender equality included the establishment of the Headquarters for the Promotion of Gender Equality and the creation of the New National Plan of Action Towards the Year 2000. In his policy statement at the August 1998 session of the Diet, the Prime Minister had said that legislative measures had to be taken to create the foundations for gender equality in society. The Headquarters was now considering the necessary legislative measures and its recommendations would soon be submitted to the Diet for discussion.

44. International treaties and conventions signed by Japan took precedence over domestic legislation. Numerous cases could be cited as examples of the Covenant's direct applicability in the courts. Under article 14 of the Japanese Constitution, which was fully in accord with article 26 of the Covenant, all people, without discrimination, were equal before the law and had equal rights to the protection of the law.

45. His country's position on signing the Optional Protocol was that it might raise problems with respect to the independence of the judiciary. Japan would keep the issue under review, analysing a number of factors, including the operational implications of signing the Protocol. As it was, however, the judicial system functioned extremely well in Japan.

46. The Japanese Constitution provided for restrictions of freedom of expression in the interests of preserving public welfare. The language in which those restrictions were outlined differed from that of article 19 of the Covenant, but the differences were purely semantic. In practice, the actual content of the restrictions was in full conformity with article 19 of the Covenant.

47. A question had been raised about the rights of Koreans and other foreign residents in Japan, including the right to vote. It was Japan's view that only persons holding Japanese nationality should have the right to vote and to stand for election. In that connection he drew attention to article 25, paragraph 3, of the Covenant, which stated that every citizen should have the right to access to public service "in his own country", implying that that right was restricted to nationals. However, Japanese nationality was not required for posts which did not involve exercising public powers or taking official decisions. Thus, foreigners could be appointed as doctors, nurses, teachers, university professors, or laboratory researchers. A number of Koreans who had acquired Japanese nationality had become members of the Diet or government officials. There were currently no plans to change the long-established system whereby only public officials with Japanese nationality were qualified to receive a pension.

48. Mr. WATANABE (Japan), responding to questions relating to detention, said that, according to figures for 1997, 96 per cent of those held in substitute prisons had not been tried or sentenced. Detention centres in Tokyo did not have enough room to accommodate the total number of persons arrested, which on average was some 2,000 a day. With regard to the right of detainees to see a lawyer, the figures for 1997 showed that out of 164,000 cases, some 2.1 per cent had been able to hold consultations

with counsel. Of those consultations, only 0.5 per cent had been restricted to under 15 minutes. The police were never present during conversations between the detainee and his lawyer.

49. The Prosecution Service and the Detention Service were completely separate. The latter was responsible for all day-to-day aspects of the care of detainees, and the Prosecution Service was not permitted under the regulations to intervene in any way. Removal from a custodial facility by investigating officers could only be authorized by the Detention Service after a series of formalities had been completed. In the same way, officers of the Detention Service had powers to halt the questioning of a suspect if it was continuing through designated mealtimes.

50. The human rights of detainees were fully respected, and the system of substitute prisons did not violate article 9, paragraph 3, of the Covenant. Training courses for police officers laid emphasis on the importance of keeping the investigation and the detention branches of the service separate, so that the fact they were both part of the same administration did not cause problems. Officers of the Detention Service regularly visited detention centres throughout the country to provide guidance and for supervision purposes. Training courses at police academies included not only study of the Constitution and the Code of Criminal Procedure, but also study of the Universal Declaration of Human Rights and of the Covenant itself, and postgraduate training seminars also included a human rights component.

51. Mr. KUROKAWA (Japan), in response to the question on whether force was used to extract confessions, said that, regrettably, there had been a small number of cases in the past in which members of the police had been found guilty of breaches of the law in that respect, but such cases were the exception. Today, the police were trained to understand that torture was strictly prohibited under the Constitution and that the rules for the conduct of investigations prohibited the use of force, threats or intimidation. Torture of a suspect when he was being questioned constituted a criminal offence, and any confessions thought to have been obtained as a result of the use of force were inadmissible in court. If the use of force was suspected, an investigation would be carried out, and if the officer concerned was found guilty, he would be severely punished. To prevent the recurrence of such offences, reports on them were compiled and circulated to police organizations throughout the country.

52. On the question of violence against women, he said that assault, bodily injury or rape within the family was treated like any other criminal offence, and the law was strictly applied. In 1997 there had been 482 cases of domestic violence, including intimidation, bodily injury and assault.

53. In 1997, 6,055 cases of rape or sexual assault against women had been recorded, leading to 5,258 arrests. Support measures for victims of such attacks included a telephone counselling service and an information booklet giving details of procedures for initiating complaints and obtaining compensation. Special help was also provided for women suffering psychological harm as a result of attacks of that kind.

54. Mr. SHIKATA (Japan), referring to the sexual exploitation of children, said that bringing children into Japan for sale or trafficking was an extremely serious offence and severely punished. He was not aware of any case in which children had been brought from South America for such purposes, but the authorities would certainly look into the allegation and take any necessary action.

55. Unfortunately, however, a large number of women from abroad, including women from South American countries, were brought to Japan for the sex trade. They were granted short-stay visas, worked as hostesses in bars and nightclubs, and became involved in prostitution. In 1997, a total of 14,925 such women had been arrested for prostitution and obscenity offences and 830, or 58.2 per cent, had been foreign nationals. The law prohibited procurement and forcible prostitution, but enforcement was hampered by the difficulty of tracing the middlemen and gangster groups responsible for organizing such activities. Amendments to the law governing entertainment businesses had recently been introduced, whereby licences would not be granted to persons who had within the last five years served a sentence for illegally employing foreign nationals. Operators of "entertainment businesses", and agents who recruited women to work in them, would be liable to very heavy fines if they confiscated the passports of their employees. The new provisions would enter into force on 1 April 1999.

56. Mr. FUKUMOTO (Japan) said that human rights investigations were conducted on a voluntary rather than a mandatory basis by officers of the Legal Affairs Bureaux and civil liberties commissioners. The bodies concerned sometimes issued recommendations, but they had no authority to ensure compliance. As their basic role was to generate awareness of human rights and prevent violations, their investigatory procedures were in no way related to civil or criminal court proceedings. Persons seeking legally binding remedies for human rights violations must take action in the courts. In 1997 the civil liberties commissioners had handled 612,558 human rights consultations, an increase of 1,835 over the previous year. They had concluded in 16,148 cases that human rights infringements had effectively occurred, 498 concerning public officials and 15,650 concerning private individuals. Most of the cases involving public officials (368) had concerned education professionals, for example corporal punishment inflicted by teachers. Other cases were directed against law enforcement officers. Although persons found to have violated human rights were not obliged to act on the commissioners' recommendations, in practice they tended to do so.

57. Human rights counselling services for foreigners, offering advice in English, Chinese and other foreign languages, had been established at the Legal Affairs Bureaux in various parts of the country. Counselling was confidential and free of charge.

58. As the human rights organs formed part of the Ministry of Justice, they were not independent of the public authorities. Japan was aware of the fact that such bodies were independent in many other countries, but its human rights organs had been operating fairly and impartially for the past 50 years, promoting, protecting and enhancing awareness of human rights. The question of whether they should be made independent called for extremely careful consideration, especially in the light of the principle of parliamentary

accountability under the Constitution. The Council for the Promotion of Human Rights was currently discussing such matters as human rights education, awareness-building and the possibility of granting legal authority to the human rights organs.

59. Japan was currently "partly committed" to the Optional Protocol to the Covenant.

60. The share of children born out of wedlock in an inheritance was half that of children born to a married couple. Japan felt that it was not an unreasonable provision because the marriage system formed the basis of inheritance legislation. However, the Legislative Council, the advisory body to the Ministry of Justice, was considering the possibility of reform. The public was divided on the matter and the family, as an institution, was so deeply cherished in Japan that no decision could be taken without due regard for public opinion. The Government had mounted a publicity campaign and the results of public opinion surveys were published.

61. Mr. SAKAI (Japan) said that judges, prosecutors and lawyers received two years' training in human rights law, including international treaties, at the Legal Training Institute. The Ministry of Foreign Affairs would submit a report to the Supreme Court on the Committee's review of Japan's fourth periodic report.

62. The provisions of the Covenant had been invoked in a case before the Tokyo District High Court concerning failure to cover a defendant's interpretation costs. It had been found that section 181 of the Code of Criminal Procedure and the application thereof had constituted a violation of article 14, paragraph 3 (f), of the Covenant. It had since become general practice in Japan to ensure that a defendant had the free assistance of an interpreter.

63. There was majority support in Japan for capital punishment for heinous crimes such as multiple homicide. The death sentence was invariably handed down in such cases. However, the Legislative Council at the Ministry of Justice had prepared a draft amendment to the Penal Code that was designed to cut the number of offences punishable by the death sentence from 17 to 8. In the light of the Legislative Council's advice, the Government was considering an overall revision of the legislation, but it had not yet submitted a bill to the Diet because of the many objections to be dealt with. Between 1945 and 1 April 1998, 25 persons had had the death sentence commuted to life imprisonment. Information regarding enforcement of the death sentence was withheld so as to spare the feelings of the bereaved family and of prisoners awaiting execution.

64. With regard to contacts between lawyers and detainees, by May 1998 there had been six cases in which the time of contact approved by the authorities had been shorter than that requested by counsel.

65. As to disclosure of evidence by the prosecutor, the investigation record presented with a view to obtaining an arrest warrant contained a vast quantity of information, some of which was of no relevance to the matter in dispute. Disclosure of such records would amount to an invasion of privacy and could

undermine the investigation process. The prosecutor therefore decided on a case-by-case basis how much evidence should be disclosed but was, of course, required to comply with a disclosure order issued by the courts.

66. Judges were authorized by article 4.2 of the Prison Act to inspect "substitute prisons" and prosecutors were also able to conduct inspections.

67. Evidence of resistance by the victim was required to obtain a conviction for rape, but not for assault. In determining whether an alleged victim had been restrained for the purpose of rape, the prosecutor took the woman's weaker constitution into consideration. The psychological condition of the victim was borne in mind during the investigation and hearings. From time to time observers were required to leave the courtroom and witnesses were sometimes questioned in the absence of the defendant.

68. If defence counsel was dissatisfied with a designated place of detention, he had the option of filing an appeal.

69. Mr. FUJITA (Japan) arranged for a brochure to be circulated to the members of the Committee describing the Japanese prison system and presenting the results of a survey of inmates' views on prison conditions, and said that all prison ordinances and regulations were published. However, the internal rules of individual prisons were not disclosed because they might be used to facilitate escape bids. Inmates were nonetheless familiarized with the rules during their briefing on admission and copies were provided in each cell for reference. Their purpose was to maintain order in the prison and, in particular, to prevent bullying. Many inmates were violent individuals or gangsters who could make life extremely difficult for weaker fellow prisoners if they were left to their own devices. He drew attention to a chart showing the results of two surveys conducted in 1996 and 1997 by the Training and Research Institute at the Ministry of Justice. Prison inmates who had just been released were interviewed during a two-week period. When asked whether the prison rules were harsh and needed to be amended, some 75 per cent of the respondents had answered in the negative. Over 77 per cent had expressed the view that inmates would behave more selfishly if disciplinary punishment or prison rules were relaxed and over 42 per cent had thought that bullying would increase in those circumstances.

70. The Japanese delegation withdrew.

The meeting rose at 6.05 p.m.